
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0785.2/19 2nd draft

ATTY/TYPIST: PW:amh

BRIEF DESCRIPTION: Concerning records disclosure and retention obligations of the legislative branch.

1 AN ACT Relating to records disclosure and retention obligations
2 of the legislative branch; amending RCW 42.56.010, 42.56.040,
3 42.56.060, 42.56.070, 42.56.080, 42.56.120, 42.56.150, 42.56.210,
4 42.56.230, 42.56.250, 42.56.280, 42.56.290, 42.56.520, 42.56.540,
5 42.56.565, 42.56.580, 42.40.020, 40.14.050, 40.14.100, 40.14.110,
6 40.14.120, and 42.56.550; adding a new section to chapter 42.40 RCW;
7 adding a new section to chapter 42.56 RCW; creating a new section;
8 repealing RCW 40.14.130, 40.14.140, 40.14.150, 40.14.160, 40.14.170,
9 40.14.180, and 42.56.560.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. **Sec. 1.** The legislature finds that democracy
12 functions best when the public knows who influences the government
13 and how government leaders carry out their duties. A free and open
14 media is essential to this. As the original initiative approved by
15 voters in 1972 states, "free and open examination of public records
16 is in the public interest, even though such examination may cause
17 inconvenience or embarrassment to public officials and others."

18 However, the extent of that examination must not be so unlimited
19 that it prevents the creation and vetting of effective policy. As the
20 branch of state government responsible for adoption of budgets,
21 lawmaking, and oversight of the implementation of laws and budgets by

the executive branch, the legislative branch has a unique role in our democracy. The legislature is a branch of government and not an "agency" of the state, which refers in chapter 42.56 RCW to the executive branch agencies and local governments. The purpose of this act is to guarantee public access to legislative information without compromising the legislature's ability to produce the best possible public policy. To that end, this act establishes how the public records act applies to the legislative branch of state government.

PART I - RECORDS DISCLOSURE OBLIGATIONS

10 **Sec. 101.** RCW 42.56.010 and 2017 c 303 s 1 are each amended to
11 read as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Agency" includes all state agencies and all local agencies.
15 "State agency" includes every state office, department, division,
16 bureau, board, commission, or other state agency. "Local agency"
17 includes every county, city, town, municipal corporation, quasi-
18 municipal corporation, or special purpose district, or any office,
19 department, division, bureau, board, commission, or agency thereof,
20 or other local public agency.

21 (2) "Legislative branch" means the senate, the house of
22 representatives, the joint legislative audit and review committee,
23 the joint legislative transportation committee, the legislative
24 evaluation and accountability program committee, the office of
25 legislative support services, the joint legislative systems
26 committee, the statute law committee, the office of the code reviser,
27 the office of the state actuary, the redistricting commission, the
28 legislative ethics board, and any other agency that is subject to the
29 direct control of the senate or the house of representatives.

30 (3) "Person in interest" means the person who is the subject of a
31 record or any representative designated by that person, except that
32 if that person is under a legal disability, "person in interest"
33 means and includes the parent or duly appointed legal representative.

34 ((+3)) (4) "Public record" includes any writing containing
35 information relating to the conduct of government or the performance
36 of any governmental or proprietary function prepared, owned, used, or
37 retained by any state or local agency or the legislative branch
38 regardless of physical form or characteristics. ((For the office of

the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.) This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

- (a) Do not serve in an administrative capacity;
- (b) Have not been appointed ((by the agency)) to ((an agency)) a board, commission, or internship; and
- (c) Do not have a supervisory role or delegated agency authority.

((4)) (5) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

Sec. 102. RCW 42.56.040 and 2012 c 117 s 127 are each amended to read as follows:

(1) Each state agency shall separately state and currently publish in the Washington Administrative Code ((and)), each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, and the legislature shall publish in a prominent place on its web site, for guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency or legislative branch decisions;

(b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure;

1 (d) Substantive rules of general applicability adopted as
2 authorized by law, and statements of general policy or
3 interpretations of general applicability formulated and adopted by
4 the agency or legislative branch; and

5 (e) Each amendment or revision to, or repeal of any of the
6 foregoing.

7 (2) Except to the extent that he or she has actual and timely
8 notice of the terms thereof, a person may not in any manner be
9 required to resort to, or be adversely affected by, a matter required
10 to be published or displayed and not so published or displayed.

11 **Sec. 103.** RCW 42.56.060 and 1992 c 139 s 11 are each amended to
12 read as follows:

13 No public agency, public official, public employee, or custodian,
14 nor the legislative branch, shall be liable, nor shall a cause of
15 action exist, for any loss or damage based upon the release of a
16 public record if the public agency, public official, public employee,
17 or custodian, or the legislative branch acted in good faith in
18 attempting to comply with the provisions of this chapter.

19 **Sec. 104.** RCW 42.56.070 and 2017 c 304 s 1 are each amended to
20 read as follows:

21 (1) Each agency and the legislative branch, in accordance with
22 published rules, shall make available for public inspection and
23 copying all public records, unless the record falls within the
24 specific exemptions of subsection (8) of this section, this chapter,
25 or other statute which exempts or prohibits disclosure of specific
26 information or records. To the extent required to prevent an
27 unreasonable invasion of personal privacy interests protected by this
28 chapter, an agency or the legislative branch shall delete identifying
29 details in a manner consistent with this chapter when it makes
30 available or publishes any public record; however, in each case, the
31 justification for the deletion shall be explained fully in writing.

32 (2) For informational purposes, each agency and the legislative
33 branch shall publish and maintain a current list containing every
34 law, other than those listed in this chapter, that the agency or
35 legislative branch believes exempts or prohibits disclosure of
36 specific information or records of the agency or legislative branch.
37 An agency's or the legislative branch's failure to list an exemption
38 shall not affect the efficacy of any exemption.

1 (3) Each local agency shall maintain and make available for
2 public inspection and copying a current index providing identifying
3 information as to the following records issued, adopted, or
4 promulgated after January 1, 1973:

5 (a) Final opinions, including concurring and dissenting opinions,
6 as well as orders, made in the adjudication of cases;

7 (b) Those statements of policy and interpretations of policy,
8 statute, and the Constitution which have been adopted by the agency;

9 (c) Administrative staff manuals and instructions to staff that
10 affect a member of the public;

11 (d) Planning policies and goals, and interim and final planning
12 decisions;

13 (e) Factual staff reports and studies, factual consultant's
14 reports and studies, scientific reports and studies, and any other
15 factual information derived from tests, studies, reports, or surveys,
16 whether conducted by public employees or others; and

17 (f) Correspondence, and materials referred to therein, by and
18 with the agency relating to any regulatory, supervisory, or
19 enforcement responsibilities of the agency, whereby the agency
20 determines, or opines upon, or is asked to determine or opine upon,
21 the rights of the state, the public, a subdivision of state
22 government, or of any private party.

23 (4) A local agency need not maintain such an index, if to do so
24 would be unduly burdensome, but it shall in that event:

25 (a) Issue and publish a formal order specifying the reasons why
26 and the extent to which compliance would unduly burden or interfere
27 with agency operations; and

28 (b) Make available for public inspection and copying all indexes
29 maintained for agency use.

30 (5) Each state agency shall, by rule, establish and implement a
31 system of indexing for the identification and location of the
32 following records:

33 (a) All records issued before July 1, 1990, for which the agency
34 has maintained an index;

35 (b) Final orders entered after June 30, 1990, that are issued in
36 adjudicative proceedings as defined in RCW 34.05.010 and that contain
37 an analysis or decision of substantial importance to the agency in
38 carrying out its duties;

39 (c) Declaratory orders entered after June 30, 1990, that are
40 issued pursuant to RCW 34.05.240 and that contain an analysis or

1 decision of substantial importance to the agency in carrying out its
2 duties;

3 (d) Interpretive statements as defined in RCW 34.05.010 that were
4 entered after June 30, 1990; and

5 (e) Policy statements as defined in RCW 34.05.010 that were
6 entered after June 30, 1990.

7 Rules establishing systems of indexing shall include, but not be
8 limited to, requirements for the form and content of the index, its
9 location and availability to the public, and the schedule for
10 revising or updating the index. State agencies that have maintained
11 indexes for records issued before July 1, 1990, shall continue to
12 make such indexes available for public inspection and copying.
13 Information in such indexes may be incorporated into indexes prepared
14 pursuant to this subsection. State agencies may satisfy the
15 requirements of this subsection by making available to the public
16 indexes prepared by other parties but actually used by the agency in
17 its operations. State agencies shall make indexes available for
18 public inspection and copying. State agencies may charge a fee to
19 cover the actual costs of providing individual mailed copies of
20 indexes.

21 (6) A public record may be relied on, used, or cited as precedent
22 by an agency against a party other than an agency and it may be
23 invoked by the agency for any other purpose only if:

24 (a) It has been indexed in an index available to the public; or

25 (b) Parties affected have timely notice (actual or constructive)
26 of the terms thereof.

27 (7) Each agency and the legislative branch may establish,
28 maintain, and make available for public inspection and copying a
29 statement of the actual costs that it charges for providing
30 photocopies or electronically produced copies, of public records and
31 a statement of the factors and manner used to determine the actual
32 costs. Any statement of costs may be adopted by an agency only after
33 providing notice and public hearing.

34 (a)(i) In determining the actual cost for providing copies of
35 public records, an agency or the legislative branch may include all
36 costs directly incident to copying such public records including:

37 (A) The actual cost of the paper and the per page cost for use of
38 agency or legislative branch copying equipment; and

1 (B) The actual cost of the electronic production or file transfer
2 of the record and the use of any cloud-based data storage and
3 processing service.

4 (ii) In determining other actual costs for providing copies of
5 public records, an agency or the legislative branch may include all
6 costs directly incident to:

7 (A) Shipping such public records, including the cost of postage
8 or delivery charges and the cost of any container or envelope used;
9 and

10 (B) Transmitting such records in an electronic format, including
11 the cost of any transmission charge and use of any physical media
12 device provided by the agency or the legislative branch.

13 (b) In determining the actual costs for providing copies of
14 public records, an agency or the legislative branch may not include
15 staff salaries, benefits, or other general administrative or overhead
16 charges, unless those costs are directly related to the actual cost
17 of copying the public records. Staff time to copy and send the
18 requested public records may be included in an agency's or the
19 legislative branch's costs.

20 (8) This chapter shall not be construed as giving authority to
21 any agency((, the office of the secretary of the senate, or the
22 office of the chief clerk of the house of representatives)) or the
23 legislative branch to give, sell or provide access to lists of
24 individuals requested for commercial purposes, and agencies((, the
25 office of the secretary of the senate, and the office of the chief
26 clerk of the house of representatives)) and the legislative branch
27 shall not do so unless specifically authorized or directed by law:
28 PROVIDED, HOWEVER, That lists of applicants for professional licenses
29 and of professional licensees shall be made available to those
30 professional associations or educational organizations recognized by
31 their professional licensing or examination board, upon payment of a
32 reasonable charge therefor: PROVIDED FURTHER, That such recognition
33 may be refused only for a good cause pursuant to a hearing under the
34 provisions of chapter 34.05 RCW, the administrative procedure act.

35 **Sec. 105.** RCW 42.56.080 and 2017 c 304 s 2 are each amended to
36 read as follows:

37 (1) A public records request must be for identifiable records. A
38 request for all or substantially all records prepared, owned, used,
39 or retained by an agency is not a valid request for identifiable

records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records. For the legislative branch, a request for all or substantially all records prepared, owned, used, or retained by the legislative branch, a legislative chamber or agency, a legislative caucus, or an individual legislator, is not a valid request for identifiable records under this chapter, unless that request is regarding a particular topic.

(2) Public records shall be available for inspection and copying, and agencies and the legislative branch shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies and the legislative branch shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies and the legislative branch shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(8) or 42.56.240(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency and legislative branch facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency or the legislative branch. Agencies and the legislative branch shall honor requests received in person during an agency's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request; however, agencies and the legislative branch may recommend that requestors submit requests using an agency provided form or web page.

(3) An agency or the legislative branch may deny a bot request that is one of multiple requests from the requestor to the agency or legislative branch within a twenty-four hour period, if the agency or legislative branch establishes that responding to the multiple requests would cause excessive interference with other essential functions of the agency or legislative branch. For purposes of this subsection, "bot request" means a request for public records that an

1 agency or the legislative branch reasonably believes was
2 automatically generated by a computer program or script.

3 **Sec. 106.** RCW 42.56.120 and 2017 c 304 s 3 are each amended to
4 read as follows:

5 (1) No fee shall be charged for the inspection of public records
6 or locating public documents and making them available for copying,
7 except as provided in RCW 42.56.240(14) and subsection (3) of this
8 section. A reasonable charge may be imposed for providing copies of
9 public records and for the use by any person of agency equipment or
10 equipment of the ((~~office of the secretary of the senate or the~~
11 ~~office of the chief clerk of the house of representatives~~)
12 legislative branch to copy public records, which charges shall not
13 exceed the amount necessary to reimburse the agency((, ~~the office of~~
14 ~~the secretary of the senate, or the office of the chief clerk of the~~
15 ~~house of representatives~~) or the legislative branch for its actual
16 costs directly incident to such copying. When calculating any fees
17 authorized under this section, an agency or the legislative branch
18 shall use the most reasonable cost-efficient method available to the
19 agency or legislative branch as part of its normal operations. If any
20 agency or the legislative branch translates a record into an
21 alternative electronic format at the request of a requestor, the copy
22 created does not constitute a new public record for purposes of this
23 chapter. Scanning paper records to make electronic copies of such
24 records is a method of copying paper records and does not amount to
25 the creation of a new public record.

26 (2) (a) Agency or legislative branch charges for actual costs may
27 ((only)) be imposed only in accordance with the costs established and
28 published by the agency or legislative branch pursuant to RCW
29 42.56.070(7), and in accordance with the statement of factors and
30 manner used to determine the actual costs. In no event may an agency
31 or the legislative branch charge a per page cost greater than the
32 actual cost as established and published by the agency or legislative
33 branch.

34 (b) An agency or the legislative branch need not calculate the
35 actual costs it charges for providing public records if it has rules
36 or regulations declaring the reasons doing so would be unduly
37 burdensome. To the extent the agency or the legislative branch has
38 not determined the actual costs of copying public records, the agency
39 or legislative branch may not charge in excess of:

1 (i) Fifteen cents per page for photocopies of public records,
2 printed copies of electronic public records when requested by the
3 person requesting records, or for the use of agency or legislative
4 branch equipment to photocopy public records;

5 (ii) Ten cents per page for public records scanned into an
6 electronic format or for the use of agency or legislative branch
7 equipment to scan the records;

8 (iii) Five cents per each four electronic files or attachment
9 uploaded to email, cloud-based data storage service, or other means
10 of electronic delivery; and

11 (iv) Ten cents per gigabyte for the transmission of public
12 records in an electronic format or for the use of agency or
13 legislative branch equipment to send the records electronically. The
14 agency or legislative branch shall take reasonable steps to provide
15 the records in the most efficient manner available to the agency in
16 its normal operations; and

17 (v) The actual cost of any digital storage media or device
18 provided by the agency or legislative branch, the actual cost of any
19 container or envelope used to mail the copies to the requestor, and
20 the actual postage or delivery charge.

21 (c) The charges in (b) of this subsection may be combined to the
22 extent that more than one type of charge applies to copies produced
23 in response to a particular request.

24 (d) An agency or the legislative branch may charge a flat fee of
25 up to two dollars for any request as an alternative to fees
26 authorized under (a) or (b) of this subsection when the agency or
27 legislative branch reasonably estimates and documents that the costs
28 allowed under this subsection are clearly equal to or more than two
29 dollars. An additional flat fee shall not be charged for any
30 installment after the first installment of a request produced in
31 installments. An agency or the legislative branch that has elected to
32 charge the flat fee in this subsection for an initial installment may
33 not charge the fees authorized under (a) or (b) of this subsection on
34 subsequent installments.

35 (e) An agency or the legislative branch shall not impose copying
36 charges under this section for access to or downloading of records
37 that the agency or legislative branch routinely posts on its public
38 internet web site prior to receipt of a request unless the requestor
39 has specifically requested that the agency or legislative branch
40 provide copies of such records through other means.

1 (f) A requestor may ask an agency or the legislative branch to
2 provide, and if requested an agency or the legislative branch shall
3 provide, a summary of the applicable charges before any copies are
4 made and the requestor may revise the request to reduce the number of
5 copies to be made and reduce the applicable charges.

6 (3)(a)(i) In addition to the charge imposed for providing copies
7 of public records and for the use by any person of agency or
8 legislative branch equipment copying costs, an agency or the
9 legislative branch may include a customized service charge. A
10 customized service charge may ((only)) be imposed only if the agency
11 or legislative branch estimates that the request would require the
12 use of information technology expertise to prepare data compilations,
13 or provide customized electronic access services when such
14 compilations and customized access services are not used by the
15 agency or legislative branch for other agency or legislative branch
16 purposes.

17 (ii) The customized service charge may reimburse the agency or
18 legislative branch up to the actual cost of providing the services in
19 this subsection.

20 (b) An agency or the legislative branch may not assess a
21 customized service charge unless the agency or legislative branch has
22 notified the requestor of the customized service charge to be applied
23 to the request, including an explanation of why the customized
24 service charge applies, a description of the specific expertise, and
25 a reasonable estimate cost of the charge. The notice also must
26 provide the requestor the opportunity to amend his or her request in
27 order to avoid or reduce the cost of a customized service charge.

28 (4) An agency or the legislative branch may require a deposit in
29 an amount not to exceed ten percent of the estimated cost of
30 providing copies for a request, including a customized service
31 charge. If an agency or the legislative branch makes a request
32 available on a partial or installment basis, the agency or
33 legislative branch may charge for each part of the request as it is
34 provided. If an installment of a records request is not claimed or
35 reviewed, the agency or legislative branch is not obligated to
36 fulfill the balance of the request. An agency or the legislative
37 branch may waive any charge assessed for a request pursuant to agency
38 or legislative branch rules and regulations. An agency or the
39 legislative branch may enter into any contract, memorandum of
40 understanding, or other agreement with a requestor that provides an

1 alternative fee arrangement to the charges authorized in this
2 section, or in response to a voluminous or frequently occurring
3 request.

4 **Sec. 107.** RCW 42.56.150 and 2014 c 66 s 3 are each amended to
5 read as follows:

6 (1) Each ~~((local elected official and statewide))~~ elected
7 official, and each person appointed to fill a vacancy in ~~((a local or~~
8 ~~statewide))~~ elective office, must complete a training course
9 regarding the provisions of this chapter, and also chapter 40.14 RCW
10 for records retention.

11 (2) Officials required to complete training under this section
12 may complete their training before assuming office but must:

13 (a) Complete training no later than ninety days after the date
14 the official either:

15 (i) Takes the oath of office, if the official is required to take
16 an oath of office to assume his or her duties as a public official;
17 or

18 (ii) Otherwise assumes his or her duties as a public official;
19 and

20 (b) Complete refresher training at intervals of no more than four
21 years for as long as he or she holds the office.

22 (3) Training must be consistent with the attorney general's model
23 rules for compliance with the public records act.

24 (4) Training may be completed remotely with technology including
25 but not limited to internet-based training.

26 **Sec. 108.** RCW 42.56.210 and 2005 c 274 s 402 are each amended to
27 read as follows:

28 (1) Except for information described in RCW 42.56.230~~((+3+))~~ (4)
29 (a) and confidential income data exempted from public inspection
30 pursuant to RCW 84.40.020, the exemptions of this chapter are
31 inapplicable to the extent that information, the disclosure of which
32 would violate personal privacy or vital governmental interests, can
33 be deleted from the specific records sought. No exemption may be
34 construed to permit the nondisclosure of statistical information not
35 descriptive of any readily identifiable person or persons.

36 (2) Inspection or copying of any specific records exempt under
37 the provisions of this chapter may be permitted if the superior court
38 in the county in which the record is maintained finds, after a

1 hearing with notice thereof to every person in interest and the
2 agency, that the exemption of such records is clearly unnecessary to
3 protect any individual's right of privacy or any vital governmental
4 function.

5 (3) ((Agency)) Responses refusing, in whole or in part,
6 inspection of any public record shall include a statement of the
7 specific exemption authorizing the withholding of the record (or
8 part) and a brief explanation of how the exemption applies to the
9 record withheld.

10 **Sec. 109.** RCW 42.56.230 and 2018 c 109 s 16 are each amended to
11 read as follows:

12 The following personal information is exempt from public
13 inspection and copying under this chapter:

14 (1) Personal information in any files maintained for students in
15 public schools, patients or clients of public institutions or public
16 health agencies, or welfare recipients;

17 (2) (a) Personal information:

18 (i) For a child enrolled in licensed child care in any files
19 maintained by the department of children, youth, and families;

20 (ii) For a child enrolled in a public or nonprofit program
21 serving or pertaining to children, adolescents, or students,
22 including but not limited to early learning or child care services,
23 parks and recreation programs, youth development programs, and after-
24 school programs; or

25 (iii) For the family members or guardians of a child who is
26 subject to the exemption under this subsection (2) if the family
27 member or guardian has the same last name as the child or if the
28 family member or guardian resides at the same address as the child
29 and disclosure of the family member's or guardian's information would
30 result in disclosure of the personal information exempted under
31 (a)(i) and (ii) of this subsection.

32 (b) Emergency contact information under this subsection (2) may
33 be provided to appropriate authorities and medical personnel for the
34 purpose of treating the individual during an emergency situation;

35 (3) Personal information in files maintained for employees,
36 appointees, or elected officials of any public agency or the
37 legislative branch to the extent that disclosure would violate their
38 right to privacy;

1 (4) Information required of any taxpayer in connection with the
2 assessment or collection of any tax if the disclosure of the
3 information to other persons would: (a) Be prohibited to such persons
4 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance
5 authorized under RCW 35.102.145; or (b) violate the taxpayer's right
6 to privacy or result in unfair competitive disadvantage to the
7 taxpayer;

8 (5) Credit card numbers, debit card numbers, electronic check
9 numbers, card expiration dates, or bank or other financial
10 information as defined in RCW 9.35.005 including social security
11 numbers, except when disclosure is expressly required by or governed
12 by other law;

13 (6) Personal and financial information related to a small loan or
14 any system of authorizing a small loan in RCW 31.45.093;

15 (7) (a) Any record used to prove identity, age, residential
16 address, social security number, or other personal information
17 required to apply for a driver's license or identicard.

18 (b) Information provided under RCW 46.20.111 that indicates that
19 an applicant declined to register with the selective service system.

20 (c) Any record pertaining to a vehicle license plate, driver's
21 license, or identicard issued under RCW 46.08.066 that, alone or in
22 combination with any other records, may reveal the identity of an
23 individual, or reveal that an individual is or was, performing an
24 undercover or covert law enforcement, confidential public health
25 work, public assistance fraud, or child support investigative
26 activity. This exemption does not prevent the release of the total
27 number of vehicle license plates, drivers' licenses, or identicards
28 that, under RCW 46.08.066, an agency or department has applied for,
29 been issued, denied, returned, destroyed, lost, and reported for
30 misuse.

31 (d) Any record pertaining to a vessel registration issued under
32 RCW 88.02.330 that, alone or in combination with any other records,
33 may reveal the identity of an individual, or reveal that an
34 individual is or was, performing an undercover or covert law
35 enforcement activity. This exemption does not prevent the release of
36 the total number of vessel registrations that, under RCW 88.02.330,
37 an agency or department has applied for, been issued, denied,
38 returned, destroyed, lost, and reported for misuse;

39 (8) All information related to individual claims resolution
40 structured settlement agreements submitted to the board of industrial

1 insurance appeals under RCW 51.04.063, other than final orders from
2 the board of industrial insurance appeals.

3 Upon request by the legislature, the department of licensing
4 shall provide a report to the legislature containing all of the
5 information in subsection (7)(c) and (d) of this section that is
6 subject to public disclosure;

7 (9) Voluntarily submitted information contained in a database
8 that is part of or associated with enhanced 911 emergency
9 communications systems, or information contained or used in emergency
10 notification systems as provided under RCW 38.52.575 and 38.52.577;
11 and

12 (10) Until the person reaches eighteen years of age, information,
13 otherwise disclosable under chapter 29A.08 RCW, that relates to a
14 future voter, except for the purpose of processing and delivering
15 ballots.

16 **Sec. 110.** RCW 42.56.250 and 2018 c 109 s 17 are each amended to
17 read as follows:

18 The following employment and licensing information is exempt from
19 public inspection and copying under this chapter:

20 (1) Test questions, scoring keys, and other examination data used
21 to administer a license, employment, or academic examination;

22 (2) All applications for public employment, including the names
23 of applicants, resumes, and other related materials submitted with
24 respect to an applicant;

25 (3) Professional growth plans (PGPs) in educator license renewals
26 submitted through the eCert system in the office of the
27 superintendent of public instruction;

28 (4) The following information held by any public agency or the
29 legislative branch in personnel records, public employment related
30 records, volunteer rosters, or included in any mailing list of
31 employees or volunteers of any public agency: Residential addresses,
32 residential telephone numbers, personal wireless telephone numbers,
33 personal email addresses, social security numbers, driver's license
34 numbers, identicard numbers, and emergency contact information of
35 employees or volunteers of a public agency, and the names, dates of
36 birth, residential addresses, residential telephone numbers, personal
37 wireless telephone numbers, personal email addresses, social security
38 numbers, and emergency contact information of dependents of employees
39 or volunteers of a public agency. For purposes of this subsection,

1 "employees" includes independent provider home care workers as
2 defined in RCW 74.39A.240;

3 (5) Information that identifies a person who, while an agency or
4 legislative employee: (a) Seeks advice, under an informal process
5 established by the employing agency, in order to ascertain his or her
6 rights in connection with a possible unfair practice under chapter
7 49.60 RCW against the person; and (b) requests his or her identity or
8 any identifying information not be disclosed;

9 (6) Investigative records compiled by an employing agency or the
10 legislative branch conducting an active and ongoing investigation of
11 a possible unfair practice under chapter 49.60 RCW or of a possible
12 violation of other federal, state, or local laws prohibiting
13 discrimination in employment;

14 (7) Criminal history records checks for board staff finalist
15 candidates conducted pursuant to RCW 43.33A.025;

16 (8) Except as provided in RCW 47.64.220, salary and benefit
17 information for maritime employees collected from private employers
18 under RCW 47.64.220(1) and described in RCW 47.64.220(2);

19 (9) Photographs and month and year of birth in the personnel
20 files of employees and workers of criminal justice agencies as
21 defined in RCW 10.97.030. The news media, as defined in RCW
22 5.68.010(5), shall have access to the photographs and full date of
23 birth. For the purposes of this subsection, news media does not
24 include any person or organization of persons in the custody of a
25 criminal justice agency as defined in RCW 10.97.030;

26 (10) The global positioning system data that would indicate the
27 location of the residence of a public employee or volunteer using the
28 global positioning system recording device; and

29 (11) Until the person reaches eighteen years of age, information,
30 otherwise disclosable under chapter 29A.08 RCW, that relates to a
31 future voter, except for the purpose of processing and delivering
32 ballots.

33 **Sec. 111.** RCW 42.56.280 and 2005 c 274 s 408 are each amended to
34 read as follows:

35 (1) The following records of the legislative branch are
36 permanently exempt from disclosure:

37 (a) Drafts of bills and drafts of amendments to bills, including
38 bills not introduced before the legislature and amendments not
39 offered on legislation;

1 (b) Memoranda from staff or members of the legislative branch
2 containing legal, policy, or fiscal options, analyses, models, or
3 analytical tools;

4 (c) Proposals, offers, counteroffers, or other records of
5 negotiations between and among legislators, caucuses, or chambers on
6 bills;

7 (d) Any record of how a legislator intends to vote on an item
8 before a committee or chamber of the legislature;

9 (e) Records of internal caucus communications, including but not
10 limited to caucus leadership votes, votes to determine legislative
11 committee structure or membership, and communications strategy
12 materials;

13 (f) Notes taken by staff or members of the legislature for the
14 use of the person taking the notes;

15 (g) Investigative records such as notes and witness statements
16 that are generated preliminary to a determination of reasonable cause
17 or dismissal of a complaint before the legislative ethics board or,
18 within the legislative branch, pursuant to an allegation of a
19 violation of an antiharassment or safe workplace policy; and

20 (h) Personally identifying information in communications with
21 individuals, including names, dates of birth, residential addresses,
22 residential telephone numbers, personal wireless telephone numbers,
23 personal email addresses, social security numbers, driver's license
24 numbers, identicard numbers, and emergency contact information,
25 provided that public records in which this information is included
26 must be disclosed once the information has been redacted. The
27 exemption under this subsection (1) (h) does not apply to: The names
28 of lobbyists required to register under chapter 42.17A RCW; lobbyist
29 employers as defined in chapter 42.17A RCW; sponsors of a grass roots
30 lobbying campaign under RCW 42.17A.640; or public employees who lobby
31 under RCW 42.17A.635.

32 (2) For state agencies and local governments not subject to
33 subsection (1) of this section, preliminary drafts, notes,
34 recommendations, and intra-agency ((memorandums)) memoranda in which
35 opinions are expressed or policies formulated or recommended are
36 exempt under this chapter, except that a specific record is not
37 exempt when publicly cited by an agency in connection with any agency
38 action.

1 **Sec. 112.** RCW 42.56.290 and 2005 c 274 s 409 are each amended to
2 read as follows:

3 Records that are relevant to a controversy to which an agency or
4 the legislative branch is a party but which records would not be
5 available to another party under the rules of pretrial discovery for
6 causes pending in the superior courts are exempt from disclosure
7 under this chapter.

8 **Sec. 113.** RCW 42.56.520 and 2017 c 303 s 3 are each amended to
9 read as follows:

10 (1) Responses to requests for public records shall be made
11 promptly by agencies ((~~, the office of the secretary of the senate,~~
12 ~~and the office of the chief clerk of the house of representatives~~)
13 or the legislative branch). Within five business days of receiving a
14 public record request, an agency ((~~, the office of the secretary of~~
15 ~~the senate, or the office of the chief clerk of the house of~~
16 ~~representatives~~)or the legislative branch) must respond in one of
17 the ways provided in this subsection (1):

18 (a) Providing the record;

19 (b) Providing an internet address and link on the agency's or the
20 legislative web site to the specific records requested, except that
21 if the requester notifies the agency or legislative branch that he or
22 she cannot access the records through the internet, then the agency
23 or legislative branch must provide copies of the record or allow the
24 requester to view copies using an agency or legislative branch
25 computer;

26 (c) Acknowledging that the agency ((~~, the office of the secretary~~
27 ~~of the senate, or the office of the chief clerk of the house of~~
28 ~~representatives~~)or legislative branch has received the request and
29 providing a reasonable estimate of the time the agency ((~~, the office~~
30 ~~of the secretary of the senate, or the office of the chief clerk of~~
31 ~~the house of representatives~~)or legislative branch will require to
32 respond to the request;

33 (d) Acknowledging that the agency ((~~, the office of the secretary~~
34 ~~of the senate, or the office of the chief clerk of the house of~~
35 ~~representatives~~)or legislative branch has received the request and
36 asking the requestor to provide clarification for a request that is
37 unclear, and providing, to the greatest extent possible, a reasonable
38 estimate of the time the agency ((~~, the office of the secretary of the~~
39 ~~senate, or the office of the chief clerk of the house of~~

1 representatives)) or legislative branch will require to respond to
2 the request if it is not clarified; or

3 (e) Denying the public record request.

4 (2) Additional time required to respond to a request may be based
5 upon the need to clarify the intent of the request, to locate and
6 assemble the information requested, to notify third persons or
7 agencies affected by the request, ((or)) to determine whether any of
8 the information requested is exempt and that a denial should be made
9 as to all or part of the request, or for requests to the legislative
10 branch, when the legislature is in session.

11 (3) (a) In acknowledging receipt of a public record request that
12 is unclear, an agency((, the office of the secretary of the senate,
13 or the office of the chief clerk of the house of representatives)) or
14 the legislative branch may ask the requestor to clarify what
15 information the requestor is seeking.

16 (b) If the requestor fails to respond to an agency or legislative
17 branch request to clarify the request, and the entire request is
18 unclear, the agency((, the office of the secretary of the senate, or
19 the office of the chief clerk of the house of representatives)) or
20 legislative branch need not respond to it. Otherwise, the agency or
21 legislative branch must respond, pursuant to this section, to those
22 portions of the request that are clear.

23 (4) Denials of requests must be accompanied by a written
24 statement of the specific reasons therefor. Agencies((, the office of
25 the secretary of the senate, and the office of the chief clerk of the
26 house of representatives)) and the legislative branch shall establish
27 mechanisms for the most prompt possible review of decisions denying
28 inspection, and such review shall be deemed completed at the end of
29 the second business day following the denial of inspection and shall
30 constitute final agency action or final action by the ((office of the
31 secretary of the senate or the office of the chief clerk of the house
32 of representatives)) legislative branch for the purposes of judicial
33 review.

34 **Sec. 114.** RCW 42.56.540 and 1992 c 139 s 7 are each amended to
35 read as follows:

36 The examination of any specific public record may be enjoined if,
37 upon motion and affidavit by an agency ((or)), its representative,
38 the legislative branch, an individual legislator, or a person who is
39 named in the record or to whom the record specifically pertains, the

1 superior court for the county in which the movant resides or in which
2 the record is maintained, finds that such examination would clearly
3 not be in the public interest and would substantially and irreparably
4 damage any person, or would substantially and irreparably damage
5 vital governmental functions. An agency or the legislative branch has
6 the option of notifying persons named in the record or to whom a
7 record specifically pertains, that release of a record has been
8 requested. However, this option does not exist where the agency or
9 legislative branch is required by law to provide such notice.

10 **Sec. 115.** RCW 42.56.565 and 2011 c 300 s 1 are each amended to
11 read as follows:

12 (1) A court shall not award penalties under RCW 42.56.550((+4))
13 (5) to a person who was serving a criminal sentence in a state,
14 local, or privately operated correctional facility on the date the
15 request for public records was made, unless the court finds that the
16 agency or legislative branch acted in bad faith in denying the person
17 the opportunity to inspect or copy a public record.

18 (2) The inspection or copying of any nonexempt public record by
19 persons serving criminal sentences in state, local, or privately
20 operated correctional facilities may be enjoined pursuant to this
21 section.

22 (a) The injunction may be requested by: (i) An agency or its
23 representative; (ii) an individual legislator; (iii) the secretary of
24 the senate; (iv) the chief clerk of the house of representatives; (v)
25 a person named in the record or his or her representative; or
26 ((iii))) (vi) a person to whom the requests specifically pertains or
27 his or her representative.

28 (b) The request must be filed in: (i) The superior court in which
29 the movant resides; or (ii) the superior court in the county in which
30 the record is maintained.

31 (c) In order to issue an injunction, the court must find that:

32 (i) The request was made to harass or intimidate the agency, the
33 legislative branch, or its employees;

34 (ii) Fulfilling the request would likely threaten the security of
35 correctional facilities;

36 (iii) Fulfilling the request would likely threaten the safety or
37 security of staff, inmates, family members of staff, family members
38 of other inmates, or any other person; or

39 (iv) Fulfilling the request may assist criminal activity.

1 (3) In deciding whether to enjoin a request under subsection (2)
2 of this section, the court may consider all relevant factors
3 including, but not limited to:

- 4 (a) Other requests by the requestor;
- 5 (b) The type of record or records sought;
- 6 (c) Statements offered by the requestor concerning the purpose
7 for the request;
- 8 (d) Whether disclosure of the requested records would likely harm
9 any person or vital government interest;
- 10 (e) Whether the request seeks a significant and burdensome number
11 of documents;
- 12 (f) The impact of disclosure on correctional facility security
13 and order, the safety or security of correctional facility staff,
14 inmates, or others; and
- 15 (g) The deterrence of criminal activity.

16 (4) The motion proceeding described in this section shall be a
17 summary proceeding based on affidavits or declarations, unless the
18 court orders otherwise. Upon a showing by a preponderance of the
19 evidence, the court may enjoin all or any part of a request or
20 requests. Based on the evidence, the court may also enjoin, for a
21 period of time the court deems reasonable, future requests by:

- 22 (a) The same requestor; or
- 23 (b) An entity owned or controlled in whole or in part by the same
24 requestor.

25 (5) An agency or the legislative branch shall not be liable for
26 penalties under RCW 42.56.550~~((4))~~ (5) for any period during which
27 an order under this section is in effect, including during an appeal
28 of an order under this section, regardless of the outcome of the
29 appeal.

30 **Sec. 116.** RCW 42.56.580 and 2007 c 456 s 6 are each amended to
31 read as follows:

32 (1) Each state and local agency shall appoint and publicly
33 identify a public records officer ~~((whose)). The secretary of the~~
~~senate, or his or her designee, is the public records officer for the~~
~~senate and senators, senate committees, and senate staff. The chief~~
~~clerk of the house of representatives, or his or her designee, is the~~
~~public records officer for the house of representatives, members of~~
~~the house of representatives, house of representatives committees,~~
~~and house of representatives staff. The secretary and the chief~~

1 clerk, or their respective designees, are jointly the public records
2 officers for the senate and the house of representatives
3 collectively, for joint committees, and for agencies of the
4 legislative branch.

5 (2) The responsibility of the public records officer is to serve
6 as a point of contact for members of the public in requesting
7 disclosure of public records and to oversee ((the agency's))
8 compliance with the public records disclosure requirements of this
9 chapter by the agency or legislative branch. A state or local
10 agency's public records officer may appoint an employee or official
11 of another agency as its public records officer.

12 ((+2))) (3) For state agencies, the name and contact information
13 of the agency's public records officer to whom members of the public
14 may direct requests for disclosure of public records and who will
15 oversee the agency's compliance with the public records disclosure
16 requirements of this chapter shall be published in the state register
17 at the time of designation and maintained thereafter on the code
18 reviser web site for the duration of the designation.

19 ((+3))) (4) For local agencies, the name and contact information
20 of the agency's public records officer to whom members of the public
21 may direct requests for disclosure of public records and who will
22 oversee the agency's compliance within the public records disclosure
23 requirements of this chapter shall be made in a way reasonably
24 calculated to provide notice to the public, including posting at the
25 local agency's place of business, posting on its internet site, or
26 including in its publications.

27 **PART II - WHISTLEBLOWER PROTECTIONS**

28 **Sec. 201.** RCW 42.40.020 and 2017 c 44 s 2 are each amended to
29 read as follows:

30 As used in this chapter, the terms defined in this section shall
31 have the meanings indicated unless the context clearly requires
32 otherwise.

33 (1) "Auditor" means the office of the state auditor.

34 (2) "Employee" means any individual employed or holding office in
35 any department or agency of state government.

36 (3) "Good faith" means the individual providing the information
37 or report of improper governmental activity has a reasonable basis in
38 fact for reporting or providing the information. An individual who

1 knowingly provides or reports, or who reasonably ought to know he or
2 she is providing or reporting, malicious, false, or frivolous
3 information, or information that is provided with reckless disregard
4 for the truth, or who knowingly omits relevant information is not
5 acting in good faith.

6 (4) "Gross mismanagement" means the exercise of management
7 responsibilities in a manner grossly deviating from the standard of
8 care or competence that a reasonable person would observe in the same
9 situation.

10 (5) "Gross waste of funds" means to spend or use funds or to
11 allow funds to be used without valuable result in a manner grossly
12 deviating from the standard of care or competence that a reasonable
13 person would observe in the same situation.

14 (6)(a) "Improper governmental action" means any action by an
15 employee undertaken in the performance of the employee's official
16 duties:

17 (i) Which is a gross waste of public funds or resources as
18 defined in this section;

19 (ii) Which is in violation of federal or state law or rule, if
20 the violation is not merely technical or of a minimum nature;

21 (iii) Which is of substantial and specific danger to the public
22 health or safety;

23 (iv) Which is gross mismanagement;

24 (v) Which prevents the dissemination of scientific opinion or
25 alters technical findings without scientifically valid justification,
26 unless state law or a common law privilege prohibits disclosure. This
27 provision is not meant to preclude the discretion of agency
28 management to adopt a particular scientific opinion or technical
29 finding from among differing opinions or technical findings to the
30 exclusion of other scientific opinions or technical findings. Nothing
31 in this subsection prevents or impairs a state agency's or public
32 official's ability to manage its public resources or its employees in
33 the performance of their official job duties. This subsection does
34 not apply to de minimis, technical disagreements that are not
35 relevant for otherwise improper governmental activity. Nothing in
36 this provision requires the auditor to contract or consult with
37 external experts regarding the scientific validity, invalidity, or
38 justification of a finding or opinion; or

39 (vi) Which violates the administrative procedure act or analogous
40 provisions of law that prohibit ex parte communication regarding

1 cases or matters pending in which an agency is party between the
2 agency's employee and a presiding officer, hearing officer, or an
3 administrative law judge. The availability of other avenues for
4 addressing ex parte communication by agency employees does not bar an
5 investigation by the auditor.

6 (b) "Improper governmental action" does not include personnel
7 actions, for which other remedies exist, including but not limited to
8 employee grievances, complaints, appointments, promotions, transfers,
9 assignments, reassessments, reinstatements, restorations,
10 reemployments, performance evaluations, reductions in pay,
11 dismissals, suspensions, demotions, violations of the state civil
12 service law, alleged labor agreement violations, reprimands, claims
13 of discriminatory treatment, or any action which may be taken under
14 chapter 41.06 RCW, or other disciplinary action except as provided in
15 RCW 42.40.030.

16 (7) "Public official" means the attorney general's designee or
17 designees; a legislator; the director, or equivalent thereof in the
18 agency where the employee works; an appropriate number of individuals
19 designated to receive whistleblower reports by the head of each
20 agency; or the executive ethics board.

21 (8) "Substantial and specific danger" means a risk of serious
22 injury, illness, peril, or loss, to which the exposure of the public
23 is a gross deviation from the standard of care or competence which a
24 reasonable person would observe in the same situation.

25 (9) "Use of official authority or influence" includes
26 threatening, taking, directing others to take, recommending,
27 processing, or approving any personnel action such as an appointment,
28 promotion, transfer, assignment including but not limited to duties
29 and office location, reassignment, reinstatement, restoration,
30 reemployment, performance evaluation, determining any material
31 changes in pay, provision of training or benefits, tolerance of a
32 hostile work environment, or any adverse action under chapter 41.06
33 RCW, or other disciplinary action.

34 (10) (a) "Whistleblower" means:

35 (i) An employee who in good faith reports alleged improper
36 governmental action to the auditor or other public official, as
37 defined in subsection (7) of this section; or

38 (ii) An employee who is perceived by the employer as reporting,
39 whether they did or not, alleged improper governmental action to the

1 auditor or other public official, as defined in subsection (7) of
2 this section.

3 (b) For purposes of the provisions of this chapter and chapter
4 49.60 RCW relating to reprisals and retaliatory action, the term
5 "whistleblower" also means:

6 (i) An employee who in good faith provides information to the
7 auditor or other public official, as defined in subsection (7) of
8 this section, and an employee who is believed to have reported
9 asserted improper governmental action to the auditor or other public
10 official, as defined in subsection (7) of this section, or to have
11 provided information to the auditor or other public official, as
12 defined in subsection (7) of this section, but who, in fact, has not
13 reported such action or provided such information; or

14 (ii) An employee who in good faith identifies rules warranting
15 review or provides information to the rules review committee, and an
16 employee who is believed to have identified rules warranting review
17 or provided information to the rules review committee but who, in
18 fact, has not done so.

19 **NEW SECTION.** **Sec. 202.** A new section is added to chapter 42.40
20 RCW to read as follows:

21 No legislator or employee of the legislative branch may be
22 compelled to disclose the following information:

23 (1) Information identifying a person who:

24 (a) Makes a report of a possible improper governmental action as
25 defined in RCW 42.40.020 to any legislator; and

26 (b) Requests his or her identity or any identifying information
27 not be disclosed; or

28 (2) Investigative records compiled by a legislator conducting an
29 investigation of a possible improper governmental action as defined
30 in RCW 42.40.020.

31 **NEW SECTION.** **Sec. 203.** A new section is added to chapter 42.56
32 RCW to read as follows:

33 The following investigative information is exempt from public
34 inspection and copying under this chapter:

35 (1) Information identifying a person who:

36 (a) Makes a report of a possible improper governmental action as
37 defined in RCW 42.40.020 to any legislator; and

1 (b) Requests his or her identity or any identifying information
2 not be disclosed; or

(2) Investigative records compiled by a legislator conducting an investigation of a possible improper governmental action as defined in RCW 42.40.020.

PART III - RECORDS RETENTION OBLIGATIONS

Sec. 301. RCW 40.14.050 and 1985 c 192 s 1 are each amended to read as follows:

9 There is created a committee, to be known as the records
10 committee, composed of the archivist, an appointee of the state
11 auditor, an appointee of the attorney general, ((and)) an appointee
12 of the director of financial management, an appointee of the chief
13 clerk of the house of representatives, and an appointee of the
14 secretary of the senate. Committee members shall serve without
15 additional salary, but shall be entitled to travel expenses incurred
16 in accordance with RCW 43.03.050 and 43.03.060 as now existing or
17 hereafter amended. Such expenses shall be paid from the
18 appropriations made for operation of their respective departments or
19 offices.

20 The records committee shall meet at least once every quarter or
21 oftener as business dictates. Action by the committee shall be by
22 majority vote and records shall be kept of all committee business.

23 It shall be the duty of the records committee to approve, modify
24 or disapprove the recommendations on retention schedules of all files
25 of public records and to act upon requests to destroy any public
26 records: PROVIDED, That any modification of a request or
27 recommendation must be approved by the head of the agency originating
28 the request or recommendation.

29 The division of archives and records management shall provide
30 forms, approved by the records committee, upon which it shall prepare
31 recommendations to the committee in cooperation with the records
32 officer of the department or other agency whose records are involved.

33 **Sec. 302.** RCW 40.14.100 and 1971 ex.s. c 102 s 2 are each
34 amended to read as follows:

35 As used in RCW 40.14.010 and 40.14.100 through ((40.14.180))
36 40.14.120, unless the context requires otherwise, "legislative
37 records" shall be defined as correspondence, amendments, reports, and

1 minutes of meetings made by or submitted to legislative committees or
2 subcommittees and transcripts or other records of hearings or
3 supplementary written testimony or data thereof filed with committees
4 or subcommittees in connection with the exercise of legislative or
5 investigatory functions, but does not include the records of an
6 official act of the legislature kept by the secretary of state, bills
7 and their copies, published materials, digests, or multi-copied
8 matter which are routinely retained and otherwise available at the
9 state library or in a public repository, or reports or correspondence
10 made or received by or in any way under the personal control of the
11 individual members of the legislature.

12 **Sec. 303.** RCW 40.14.110 and 2011 c 336 s 819 are each amended to
13 read as follows:

14 Nothing in RCW 40.14.010 and 40.14.100 through ((40.14.180))
15 40.14.120 shall prohibit a legislator or legislative employee from
16 contributing his or her personal papers to any private library,
17 public library, or the state archives. The state archivist is
18 authorized to receive papers of legislators and legislative employees
19 and is directed to encourage the donation of such personal records to
20 the state. The state archivist is authorized to establish such
21 guidelines and procedures for the collection of personal papers and
22 correspondence relating to the legislature as he or she sees fit.
23 Legislators and legislative employees are encouraged to contribute
24 their personal papers to the state for preservation.

25 **Sec. 304.** RCW 40.14.120 and 1971 ex.s. c 102 s 4 are each
26 amended to read as follows:

27 As used in RCW 40.14.010 and 40.14.100 through ((40.14.180))
28 40.14.120 "clerk" means clerk of the Washington state house of
29 representatives and "secretary" means the secretary of the Washington
30 state senate.

31 NEW SECTION. **Sec. 305.** The following acts or parts of acts are
32 each repealed:

33 (1) RCW 40.14.130 (Legislative records—Duties of legislative
34 officials, employees and state archivist—Delivery of records—Custody
35 —Availability) and 2011 c 336 s 820 & 1971 ex.s. c 102 s 5;

(2) RCW 40.14.140 (Legislative records—Party caucuses to be advised—Information and instructions) and 2011 c 336 s 821 & 1971 ex.s. c 102 s 6;

(3) RCW 40.14.150 (Legislative records—Use for research) and 1971 ex.s. c 102 s 7;

(4) RCW 40.14.160 (Legislative records—Rules for access to records) and 1971 ex.s. c 102 s 8;

(5) RCW 40.14.170 (Legislative records—Sound recordings) and 1971 ex.s. c 102 s 9; and

(6) RCW 40.14.180 (Legislative records—Construction—Confidentiality of bill drafting records) and 1983 c 3 s 85 & 1971 ex.s. c 102 s 10.

PART IV - PROCEDURAL AND MISCELLANEOUS PROVISIONS

Sec. 401. RCW 42.56.550 and 2017 c 304 s 5 are each amended to read as follows:

(1) Any records requests made to the legislative branch, its chambers, members, employees, or agencies before the effective date of this section under this chapter or other statutes must be renewed after the effective date of this section.

(2) (a) Upon the motion of any person having been denied an opportunity to inspect or copy a public record:

(i) By an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records; or

(ii) By the legislative branch, the superior court of Thurston county may require the legislative branch to show cause why it has refused to allow inspection or copying of a specific public record or class of records; provided that no claim may be filed against the legislative branch, its chambers, members, employees, or agencies for denial of an opportunity to inspect or copy a public record where the alleged denial occurred before the effective date of this section.

(b) The burden of proof shall be on the agency or legislative branch to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

1 ((+2))) (3) Upon the motion of any person who believes that an
2 agency or the legislative branch has not made a reasonable estimate
3 of the time that the agency or legislative branch requires to respond
4 to a public record request or a reasonable estimate of the charges to
5 produce copies of public records, the superior court ((~~in the county~~
6 ~~in which a record is maintained~~)) may require the responsible agency
7 or the legislative branch to show that the estimate it provided is
8 reasonable. The burden of proof shall be on the agency or legislative
9 branch to show that the estimate it provided is reasonable.

10 ((+3))) (4) Judicial review of all ((agency)) actions taken or
11 challenged under RCW 42.56.030 through 42.56.520 shall be de novo.
12 Courts shall take into account the policy of this chapter that free
13 and open examination of public records is in the public interest,
14 even though such examination may cause inconvenience or embarrassment
15 to public officials or others. Courts may examine any record in
16 camera in any proceeding brought under this section. The court may
17 conduct a hearing based solely on affidavits. Judicial review of a
18 denial of an opportunity to inspect or copy a public record by the
19 legislative branch may not be sought when the record was
20 inadvertently not retained prior to the effective date of this
21 section.

22 ((+4))) (5) Any person who prevails against an agency or the
23 legislative branch in any action in the courts seeking the right to
24 inspect or copy any public record or the right to receive a response
25 to a public record request within a reasonable amount of time shall
26 be awarded all costs, including reasonable attorney fees, incurred in
27 connection with such legal action. In addition, it shall be within
28 the discretion of the court to award such person an amount not to
29 exceed one hundred dollars for each day that he or she was denied the
30 right to inspect or copy said public record.

31 ((+5))) (6) For actions under this section against counties, the
32 venue provisions of RCW 36.01.050 apply.

33 ((+6))) (7) Actions under this section must be filed within one
34 year of the agency's claim of exemption or the last production of a
35 record on a partial or installment basis.

36 NEW SECTION. **Sec. 402.** RCW 42.56.560 (Application of RCW
37 42.56.550) and 2005 c 274 s 289 & 1995 c 397 s 16 are each repealed.

1 NEW SECTION. **Sec. 403.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

--- END ---